United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

BRIEF FOR APPELLANT

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA

United States Court of Appeals
For the
District of Columbia Circuit
FILED AUG 21 1959
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CLERK

NO. 15,275

WILLIAM C. CLAY,
APPELLANT

V.

CURTIS REID,
APPELLEE

850

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HYMAN J. COHEN

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STATEMENT OF QUESTIONS PRESENTED

1. May the Attorney General transfer without the consent of the judge, a juvenile committed to the National Training School for Boys by order of the Juvenile Court of the District of Columbia, to a penitentiary or reformatory where he will come in contact and communication with adult criminals or to any institution where the program for rehabilitation is not similar to that in existence at the National Training School for Boys?

2. If such a transfer is made, may the juvenile be charged with and convicted of an assault growing out of the juvenile's confinement with adult fellow inmates?

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1. The court erred in ruling that by virtue of authority given in 55 Statute 743 and U.S.C. 4082 the Attorney General could transfer a juvenile committed to the National Training School for Boys by the Juvenile Court of the District of Columbia, from place to place, and confine him with adult criminals	8
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UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA

NO. 15,275

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v.

CURTIS REID, APPELLEE

APPEAL FROM JUDGMENT OF UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

The jurisdiction of this court is invoked under Section 1291, Title 28, United States Code.

STATEMENT OF THE CASE

On February 29, 1956 under and by virtue of an order of the judge of the Juvenile Court of the District of Columbia on cases numbered 19-897J, 21-068J, 21-070J, 21-074J, and 21-075J William C. Clay was committed to the National Training School for Boys until he should become 21 years of age.

On October 17, 1957, without the consent of the judge of the Juvenile Court of the District of Columbia, said defendant was removed from the National Training School for Boys and sent to the Federal Reformatory at Chillicothe, Ohio

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where he remained until December 5, 1957 when, without the consent of the aforesaid juvenile court, he was moved to the Federal Penitentiary at Terre Haute, Indiana.

On February 18, 1958, in the U. S. District Court, Indianapolis, Indiana, said William C. Clay was sentenced to a term of imprisonment of six months on each of two counts of assault to run consecutively with each other and with the sentence which had been imposed in the Juvenile Court. Said assault was alleged to have been committed in the Federal Penitentiary, Terre Haute, Indiana by the defendant and two others upon one James Butcher, age 60, who was committed to the custody of the Attorney General following convictinn on charges of Possession of Untaxpaid Whiskey, and upon one Lawrence Howard Whitt, age 41, who was committed to the custody of the Attorney General following conviction on charges of Transporting a Female Interstate for Immoral Purposes.

On or about March 30, 1959, upon suggestion of the Department of Justice, the Juvenile Court of the District of Columbia vacated and set aside its judgment of February 29, 1956 and the said defendant was returned to the District of Columbia Jail to begin serving the sentence which had been imposed by the United States District Court, Indianapolis, Indiana.

A Writ of Habeas Corpus was issued on May 21, 1959 upon petitioner's application.

On May 25, 1959 after hearing argument of counsel, Judge Alexander Holtzoff discharged the writ and remanded the

petitioner to the custody of the respondent for the following reasons:

1. That by virtue of the authority given in 55 Statute 743 and 18 U.S.C. 4082 the Attorney General could transfer from place to place all juvenile offenders committed to the National Training School for Boys.

2. That petitioner's argument that his being transferred from the National Training School for Boys was the proximate cause of an alleged incident leading to his conviction for crime was without merit.

STATUTES INVOLVED

District of Columbia Code, Title 11, Section 902 (1951 Ed.) provides:

> "The purpose of this chapter is to secure for each child under its jurisdiction such care and guidance .....as will serve the child's welfare...,and, when such child is removed from his own family to secure for him custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents."

District of Columbia Code, Title 11, Section 907 (1 and 1a) 1951 Ed. provides:

> ".....the court shall have original and exclusive jurisdiction of all cases and proceedings concerning any child coming within the terms and provisions of this chapter."

District of Columbia Code, Title 11, Section 915 (2) 1951 Ed. provides that the juvenile court may by order duly entered:

> "Commit the child to the.....National Training School for Boys if in need of such care as is given in such schools.....".

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District of Columbia Code, Title 11, Section 915 (3) (1951 Ed.) provides:

> "No adjudication upon the status of any child in the jurisdiction of the court shall operate to impose any of the civil liabilities ordinarily imposed by conviction, nor shall any child be deemed a criminal by reason of such adjudication, nor shall such adjudication be deemed a conviction of a crime...".

District of Columbia Code, Title 32, Section 816, 1951 Ed. provides:

> "Every boy sent to said school shall remain until he is twenty-one years of age, unless sooner discharged or bound as an apprentice."

District of Columbia Code, Title 32, Section 811, 1951 Ed. provides:

> "The superintendent (of the National Training School for Boys).....with such subordinate officers as may be appointed...shall have charge and custody of the boys;.....shall employ them in agricultural, mechanical or other labor, shall give them instructions in reading, writing, arithmetic, geography, and such other studies and in such arts and trades as the trustees may direct; and shall employ such methods of discipline as will, as far as possible, reform their characters, preserve their health, promote regular improvement in their studies and employments, and secure in them fixed habits of religion, morality, and industry."

District of Columbia Code, Title 11, Section 927, 1951 Ed. provides:

> "No child under 18 years of age shall be placed in or committed to any prison, jail, or lock-up, nor shall such child be taken into custody, detained, or transferred from place to place, where he may be brought in contact or communication with any adult convicted of crime or under arrest and charged with crime; Provided that a child 16 years of age or older, whose habits or conduct are deemed such as to constitute a menace to other children, may, with the consent of the judge or director of

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social work, be placed in a jail or other place of detention for adults, but in a room or ward separate from adults."

Reorganization Plan 11 effective July 1, 1939

(4 Federal Register 2731; 53 Stat.1431 Part 1 Sub-section 3b reads as follows:

> "The National Training School for Boys and its functions (including the functions of its Board of Trustees) are hereby transferred to the Department of Justice and shall be administered by the Director of the Bureau of Prisons, under the direction and supervision of the Attorney General."

Part 1 Sub-section 3c of the plan reads as follows:

> "The Board of Trustees of the National Training School for Boys (including the consulting trustees) is hereby abolished."

Part 4 "General Provisions" Section 401 of the plan reads as follows:

> "Except as otherwise provided in this plan, the functions of the head of any department relating to the administration of any agency or function transferred from his department by this plan, are hereby transferred to and shall be exercised by the head of the department or agency to which such transferred agency or function is transferred by this plan."

Reorganization Act of 1939 (53 U.S.Statutes at Large, 561)

Part 1 Section 3f reads as follows:

> "No reorganization plan under section 4 (to reduce the number of agencies by consolidating according to major purposes) shall provide for authorizing any agency to exercise any function which is not expressly authorized by law."

Part 1 Section 8a reads as follows:

> "All orders, rules, regulations, permits, or other privileges made, issued or granted by or in respect of any agency or function transferred to, or consolidated with, any other agency or function under the provisions of this title, and in effect at the time of the transfer or consolidation, shall continue in effect to the same extent as if such transfer or consolidation had not occurred, until modified, superseded, or repealed."

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District of Columbia Code, Title 11, Section 916, 1951 Ed. provides:

> "An order of commitment or probation made by the court in the case of a child shall be subject to modification from time to time..... If the court is of the opinion that an investigation should be had, it may, upon due notice to all concerned, proceed to hear and determine the question at issue. It may thereupon order that such child.....be retained in the custody of the institution...; and may direct such institution.....to make such other arrangements for the child's welfare as the circumstances of the case may require; or the court may make a further order of commitment."

Title 18 U. S. Code Section 4082 reads as follows:

> "Persons convicted of an offense against the United States shall be committed, for such terms of imprisonment as the court may direct, to the custody of the Attorney General of the United States or his authorized representatives, who shall designate the places of confinement where the sentences shall be served.
>
> "The Attorney General may designate any available, suitable, and appropriate institutions, whether maintained by the Federal Government or otherwise, or whether within or without the judicial district in which the person was convicted.
>
> "The Attorney General may order an inmate transferred from one institution to another.
>
> "The Authority conferred upon the Attorney General by this section shall extend to all persons committed to the National Training School for Boys". (June 25, 1948 Ch 645 par.1-62 Statutes 850).

STATEMENT OF POINTS RELIED UPON BY APPELLANT

1. The court erred in ruling that the Attorney General could transfer a juvenile committed to the National Training School for Boys from place to place and confine him with adult prisoners.

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2. The court erred in ruling that such transfer and confinement with adult prisoners was not the proximate cause of an alleged incident which led to the conviction of the appellant in the United States District Court for the Southern District of Indiana, Indianapolis, Indiana.

SUMMARY OF ARGUMENT

I

The Juvenile Court has exclusive jurisdiction over all proceedings involving persons committed by its order to the National Training School for Boys and the Attorney General, as an administrative matter, can transfer said person only to such institutions having programs for the rehabilitation of juvenile offenders similar to that being carried on at the National Training School for Boys.

II

Without the consent of the judge of the Juvenile Court of the District of Columbia, the Attorney General cannot transfer said person to a jail or penal institution where he will come in contact or communication with adult criminals.

III

If said juvenile is transferred without the consent of the judge to a penal institution and housed in such a manner that he will come in contact and communication with adult criminals, said juvenile cannot be charged with and convicted of an assault growing out of the juvenile's confinement with adult fellow inmates.

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ARGUMENT

I

THE COURT ERRED IN RULING THAT BY VIRTUE OF AUTHORITY GIVEN IN 55 STATUTE 743 AND 18 U.S.C. 4082 THE ATTORNEY GENERAL COULD TRANSFER A JUVENILE COMMITTED TO THE NATIONAL TRAINING SCHOOL FOR BOYS BY THE JUVENILE COURT OF THE DISTRICT OF COLUMBIA, FROM PLACE TO PLACE, AND CONFINE HIM WITH ADULT CRIMINALS.

The objective of legislation dealing with juvenile offenders is rehabilitation, not punishment. IN RE KROLL, D.C. Mun. App. 1945; 43 A 2- 706.

"The fundamental philosophy of the juvenile court laws is that a delinquent child is to be considered and treated not as a criminal but as a person requiring care, education and protection. He is not thought of as a bad man who should be punished, but as an erring sick child who needs help." Thomas v. U.S. 74 App. D.C. 167; 121 F2-905 at page 908.

"The term of commitment, the nature of commitment, and the place of commitment...are all within the exclusive jurisdiction of the Juvenile Court. When jurisdiction shall have been obtained by the court in the case of any child, such child shall continue under the jurisdiction of the court until he becomes twenty-one years of age, unless discharged prior thereto. The Act expressly provides that the adjudication upon the status of a child shall not be deemed a conviction of a crime.....and shall not carry with it the stigma of crime or criminal as in a conviction in a court of criminal law." Huff v. O'Bryant 74 App. D.C. 19; 121 F2-890 (1941).

The program to which juveniles are to be subjected at the National Training School for Boys is outlined in the District of Columbia Code, Title 32, Section 811 (1951 Ed.).

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"Petitioner, who was under the age of 18 at the time of his violation of law and the adjudication by the Juvenile Court, was and is for that violation subject to the orders of the Juvenile Court and not to the orders of the Attorney General under the statute invoked in the order transferring him." Huff v. O'Bryant, 74 App. D.C. 19; 121 F2-890(1941).

"Unless the institution is one whose primary concern is the individual's moral and physical well being, unless its facilities are intended for and adapted to guidance, care, education and training rather than punishment, unless its supervision is that of a guardian, not that of a prison guard or jailor, it seems clear a commitment to such institution is by reason of conviction of crime and cannot withstand an assault for violation of fundamental Constitutional safeguards". White v. Reid, 125 Fed. Sup. 647 at page 650 (1954).

"In light of the history of the manner in which Congress has dealt with erring youths in the Juvenile Court Act (D. C. Code 11-901 et.seq.) indicating no purpose to stamp the juvenile with criminal conviction (D.C.Code 11-929) except in extreme cases where waivers are made by the Juvenile Court (D.C.Code 11-914) it is reasonable to interpret the Act of Congress conferring authority on the Attorney General to designate places of confinement as intended to be limited to those where special facilities are provided for training and care somewhat comparable to those of the National Training School for Boys, but with closer supervision where necessary for those that may prove to be otherwise intractable." White v. Reid, 125 Fed. Sup. 647 at page 651 (1954).

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"The above-quoted section (Title 18, U.S.C. 4082, paragraphs 1 and 4 and Reviser's Note in the Code) it is well to note, is directed to convictions of an offense against the United States, and in the District Courts of the United States, and cannot by its very terms be held to apply to one committed under a statute which regards him as a juvenile and specifically provides he is not to be regarded as convicted of a crime by the fact of such commitment." Cogdell v. Reid, H.C.-10-59 United States District Court for the District of Columbia." (Bracket supplied).

"The mere abolishment of the Board of Trustees and the assignment of its functions to the Bureau of Prisons does not and cannot make a convicted criminal out of one whom the law says shall not be regarded as such." Cogdell V. Reid, 1059; United States District Court for the District of Columbia.

II

THE COURT ERRED IN RULING THAT SUCH A TRANSFER AND CONFINEMENT WITH ADULT PRISONERS WAS NOT THE PROXIMATE CAUSE OF AN ALLEGED INCIDENT WHICH LED TO THE CONVICTION OF THE APPELLANT IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA.

The Attorney General transferred the appellant to a penitentiary where adult-hardened criminals were confined. It was only natural that after twelve (12) months of contact and communication with these adult criminals that the appellant would become involved in conflict with these men.

The Juvenile Court Act was passed because Congress specifically had in mind the probable consequence of throwing

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a boy in with hardened criminals. Had it not been for such wrongful confinement, this unfortunate boy would never have become involved in the incident alleged. District of Columbia Code, Title 11 Section 927 (1951 Ed.).

C O N C L U S I O N

The judgment should be reversed and the cause remanded to the District Court with instructions to issue the writ.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing and attached Brief For Appellant was served upon Oliver Gasch, United States Attorney, by leaving same in his office in the United States Courthouse, Washington, D.C on the 21st day of August, 1959

Eugene Roberson